



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 27**

**[WT Docket No. 06-150, DA 17-810]**

**In the Matter of Service Rules for the 698-746, 747-762, and 777-792 MHz Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission explains the overall rules and policies for the relicensing of 700 MHz spectrum that is returned to the Commission's inventory as a result of licensees' failure to meet applicable construction requirements, as set forth by the Commission in the 700 MHz Second Report and Order (WT Docket No. 06-150, FCC 07-132). The document seeks comment on the Wireless Telecommunications Bureau's proposed approach for implementing the various rules and policies of the relicensing process.

**DATES:** Interested parties may file comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], and reply comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by WT Docket No. 06-150, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Generally if more than one docket or rulemaking number appears in the caption of this

proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Commenters are only required to file copies in GN Docket No. 13-111.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Anna Gentry, [Anna.Gentry@fcc.gov](mailto:Anna.Gentry@fcc.gov), of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-2887. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document in WT Docket No. 06-150, DA 17-810, released on August 28, 2017. The complete text of the Public Notice is available for

viewing via the Commission's ECFS website by entering the docket number, WT Docket No. 06-150. The complete text of the documents also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12<sup>th</sup> Street S.W., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563.

This proceeding shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules (47 CFR 1.1200 et seq.). Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## **I. Synopsis**

In the 2007 700 MHz Second Report and Order,<sup>1</sup> the Commission adopted rules for relicensing of 700 MHz Lower A, B, and E Block, and Upper C Block spectrum that is returned to the Commission's inventory as a result of licensees' failure to meet applicable construction requirements. The Commission set forth the overall rules and policies for the relicensing process and delegated authority to the Wireless Telecommunications Bureau (Bureau) to implement those rules and policies. To the extent the 700 MHz Second Report and Order and other Commission rules set forth elements of the relicensing process, the document cites to those rules, and otherwise seeks comment on the Bureau's proposed approach to the remaining elements of the process, including the respective costs and benefits of the various proposals.

### **A. Required Filing for Keep What You Serve**

Pursuant to the 700 MHz Second Report and Order, licensees that fail to meet the construction requirement and are subject to the Keep What You Serve (KWYS) KWYS rules will be required to file an electronic coverage map in order to demonstrate the geographic portion of the licensed area the licensee will retain, and the geographic area that will be returned to the Commission for reassignment. Licensees admitting failure must include the additional required filing for KWYS with their construction notification at the end-of-term construction deadline. If a licensee claims to have met the construction benchmark, but the Bureau deems the licensee to have failed after review of the construction notification, the licensee will be asked to amend its initial construction notification filing to include the additional required filing for KWYS.

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<sup>1</sup> Service Rules for 698-746, 747-762, and 777-792 MHz Bands et al., Second Report and Order, 22 FCC Rcd 15289 (2007) (700 MHz Second Report and Order).

In order to implement the KWYS rules, the document proposes and seeks comment on a process whereby licensees would demonstrate the “served” area of the license by filing a shapefile showing a smooth enclosed 40 dBμV/m field strength contour (Smooth Contour) of existing facilities as of the end-of-term deadline. The portion of the license market covered by the Smooth Contour would be deemed “served” for the purposes of the KWYS rule and become the reduced licensed area that the licensee “keeps.” Recognizing that some licensees might provide service at significantly lower field strength such that the 40 dBμV/m Smooth Contour would result in a reduced licensed area that is substantially smaller than the licensee’s actual service area, the document also proposes that, if the 40 dBμV/m Smooth Contour would result in a reduced licensed area that is at least 25 percent smaller than the licensee’s actual service area, the licensee could demonstrate the service area using a lower dBμV/m field strength smooth contour (Alternative Smooth Contour). Under this proposed approach, in order to be acceptable for filing, a submission using an Alternative Smooth Contour would be required to demonstrate that: (1) the licensee is operating a viable service at the lower field strength; and (2) the service area using the lower dBμV/m field strength Alternative Smooth Contour is at least 25 percent larger than it would be using the 40 dBμV/m field strength Smooth Contour. The Bureau would update the license in the Commission’s Universal Licensing System (ULS) using either the Smooth Contour or Alternative Smooth Contour shapefile to reflect the reduced license boundary. The remaining portion of the original license market would be deemed unserved area and would return to the Commission’s inventory for relicensing.

The document seeks comment on this proposed methodology for determining licensees’ service area and what, if any, alternatives to this approach might achieve the Commission’s goals of accurately reflecting licensees’ service areas and making spectrum available for relicensing in an efficient manner.

## **B. Identifying Unserved Area**

Pursuant to the 700 MHz Second Report and Order, information about the available unserved areas will be publicly available. Under the approach proposed in this document, the Bureau would use the Smooth Contour or Alternative Smooth Contour shapefiles submitted by failing licensees to determine the unserved areas of each market. The Bureau would compile these unserved portions together as areas that would be available for relicensing and would provide instructions on how to access that information by public notice. The public notice announcing the unserved areas available for relicensing would also provide further instructions and specific dates for the commencement of the relicensing process. In setting these dates, the Bureau intends to provide potential applicants with at least 60 days prior to the commencement of relicensing to enable them to make necessary inquiries about available area, e.g. site leases, existing infrastructure, neighboring operations, and network and backhaul needs.

## **C. Phased Relicensing Process**

The document also describes the two-phased application process for the relicensing of unserved areas, as set forth in Section 27.14 of the Commission's rules. The document explains that applications for available unserved areas will be filed via ULS and the applicant will select the available unserved area that they wish to serve by filing a shapefile covering that area.

In order to implement the relicensing process, this document proposes to provide applicants with access to a publicly available map displaying the areas available for relicensing, from which they could determine the areas they are interested in licensing. In the interest of administrative clarity and functionality, this document proposes limiting a single application to include one shapefile of a contiguous shape, or, if non-contiguous, requiring that the shapes be within a single market boundary. If an applicant files for non-contiguous shapes in a single application, grant of the application would

result in a single license and a single buildout requirement would be applied to all shapes as a whole. Consequently, failure to meet the buildout requirement with respect to one non-contiguous shape would result in application of the penalty for failure to all shapes as a whole. This document seeks comment on this proposed treatment of applications for available unserved areas and what, if any, further restrictions or methods might be necessary to ensure efficient processing and review of applications filed during the relicensing process.

#### **D. Phase 1 of Relicensing**

As set forth in the Commission's rules, relicensing will begin with a 30-day Phase 1 filing window. Pursuant to section 27.14, the original licensee of available unserved areas, whose authorization to serve that area terminated due to failure to meet the end-of-term construction benchmark, is barred during Phase 1 from applying to relicense that area. This Phase 1 bar is specific to each unserved area, and therefore an applicant that is barred from one unserved area during Phase 1 is not barred from applying for other available areas for which it was not the original licensee.

In order to implement the Phase 1 bar, this document proposes to apply the bar to any applicant that has any interest or ownership in, or any control of, the original licensee and to any applicant in which the original licensee has any interest, ownership, or control. This document seeks comment on requiring applicants to certify in the application that: (1) the applicant is not the original licensee of the unserved area; (2) the applicant does not have any interest in or own or control any part of the original licensee of the unserved area; and (3) the original licensee of the unserved area does not have any interest in or own or control any part of the applicant. This document seeks comment on this approach and potential alternatives for applying the bar, including application of the Commission's pro forma standard for determining ownership, which looks to both de jure and de facto control of the licensee.

Pursuant to the Commission’s Part 1 rules, at the end of the 30-day Phase 1 filing window, the Bureau will issue a public notice listing applications found acceptable for filing during Phase 1. The public notice will identify which acceptable applications, if any, are mutually exclusive with each other. All applications received during the Phase 1 filing window for a particular available unserved area are treated as contemporaneous for the purposes of mutual exclusivity. Pursuant to section 27.14(j)(1), applications will be deemed mutually exclusive if they propose areas overlapping with other applications. Consistent with the 700 MHz Second Report and Order, no further mutually exclusive applications may be filed after the 30-day filing window has ended, but licensees and third parties may file petitions to deny any pending applications within 30 days of the release of the public notice listing Phase 1 applications found acceptable for filing. This document explains that, subject to the Greenmail Rule, applicants may resolve mutual exclusivity by withdrawing or filing a minor amendment to one or both of the mutually exclusive applications, and describes the types of amendments that qualify as a minor amendment, rather than a major amendment, which requires a new public notice period.

In order to implement these policies concerning mutually exclusive applications, this document proposes that applicants would be permitted to resolve their mutually exclusive applications or attempt to reach a settlement during the public notice period that follows the Phase 1 filing window. Similar to the Commission’s approach in other licensing and competitive bidding contexts, this document proposes that the definition of mutually exclusive applications would include “daisy chains” of mutual exclusivity, which occur when two or more applications contain proposed areas that do not directly overlap, but are linked together into a chain by the overlapping proposal(s) of other(s).

#### **E. Phase 2 of Relicensing**



As set forth in the rules establishing the relicensing process, during Phase 2 interested applicants, including those that were barred during Phase 1, may file applications for available unserved areas that were not licensed during Phase 1 or for which there are no pending applications.

In order to implement the Phase 2 process, this document proposes and seeks comment on a process whereby the Bureau would update the publicly available relicensing map following Phase 1 to reflect pending applications, licenses that were issued, and area that remains available for relicensing. As with Phase 1, this document proposes that the definition of mutual exclusivity for Phase 2 applications would include applications that, though not mutually exclusive of the first-filed application, are mutually exclusive of another application that overlaps the first-filed application – i.e., a “daisy chain” as described above. This document proposes that the public notice for the first-filed application would determine the applicable filing period for all subsequent mutually exclusive or “daisy chain” applications. Following a Phase 2 application’s 30-day public notice, this document proposes and seeks comment on a process whereby, if the Bureau determines there are existing applications that are mutually exclusive of the initial application, it would notify the parties of the conflicting applications and provide 60 days to resolve the mutual exclusivity. Any mutually exclusive applications that are not resolved by the end of the 60-day period would be subject to auction. This document seeks comment on this proposed approach to mutual exclusivity during Phase 2.

#### **F. Relicensed Area Construction Requirement and Showing**

As set forth in section 27.14(j)(3), licensees of 700 MHz licenses acquired through the relicensing process will have one year from the date the new license is issued to complete construction, provide signal coverage, and offer service over 100 percent of the geographic area of the new license area. Pursuant to the Commission’s rules, if the licensee fails to meet this construction requirement, its

license will automatically terminate without Commission action and it will not be eligible to apply to provide service to this area at any future date.

In order to implement the Commission's goals of facilitating rapid deployment of service on relicensed spectrum and to prevent potential gaming of the relicensing process, this document proposes to treat any modification, cancellation, or assignment of a license as failure to provide signal coverage and offer service to the entire relicensed area, such that the penalty for failure would apply. Specifically, under the proposal, licensees would not be permitted to modify the licensed area prior to meeting the one-year construction benchmark in order to reduce the area they must cover. Cancellation of the license prior to meeting the one-year construction benchmark would also constitute failure, and the former licensee would not be eligible to apply to serve any portion of this area at any future date. Finally, licensees would be permitted to file applications to assign licenses acquired through relicensing (including requests to partition and disaggregate) only after they have demonstrated that they have met the construction benchmark. This document seeks comment on this approach to the construction requirement and what, if any, further restrictions might be necessary to promote the Commission's goals in establishing the requirements.

In order to implement the construction requirement for relicensed area, this document proposes that, at the one-year construction deadline, licensees would be required to demonstrate that they provide signal coverage and offer service over 100 percent of the geographic area by filing either a Smooth Contour or an Alternative Smooth Contour, consistent with the proposed required filings for KWYS. This document seek comment on what, if any, alternative filings might be appropriate methods for licensees to demonstrate that they satisfy the construction requirement.

Given the proposed requirements and penalties for failing to meet the construction requirement, this document notes that it is particularly important that potential participants in the

relicensing process only apply for portions of available unserved areas if they, through due diligence, have determined they can provide signal coverage and offer service over 100 percent of the area within one year from the date of license issuance. Under approach proposed in this document, it would be particularly important that potential licensees conduct due diligence prior to applying for available unserved areas during the relicensing process and ensure the shapefile used in their application is an accurate reflection of the Smooth Contour or Alternative Smooth Contour they would be required to file at the one-year construction deadline. Additionally, the Bureau recommends that potential licensees review the technical narratives and specifications of construction notifications that the Bureau has previously accepted for the 700 MHz band.

## **II. PROCEDURAL MATTERS**

### **Initial Regulatory Flexibility Act Analysis**

As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the 700 MHz Further Notice<sup>2</sup> and a Final Regulatory Flexibility Analysis (FRFA) in connection with the 700 MHz Second Report and Order.<sup>3</sup> While no commenter directly responded to the IRFA, the FRFA addressed concerns about the impact on small business of the KWYS rules. The IRFA and FRFA set forth the need for and objectives of the Commission's rules for the KWYS rules; the legal basis for those rules, a description and estimate of the number of small entities to which the rules apply; a description of projected reporting, recordkeeping, and other compliance requirements for small entities; steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and a statement that there are no

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<sup>2</sup> Service Rules for 698-746, 747-762, and 777-792 MHz Bands et al., Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8212 (2007) (700 MHz Further Notice).

<sup>3</sup> 700 MHz Second Report and Order, 22 FCC Rcd at 15542.

federal rules that may duplicate, overlap, or conflict with the rules. The proposals in this document do not change any of those descriptions.

This document does, however, detail proposed procedures for implementing those rules. Therefore, this document seeks comment on how the proposals in this document could affect either the IRFA or the FRFA. Such comments must be filed in accordance with the same filing deadlines for responses to this document and have a separate and distinct heading designating them as responses to the IRFA and FRFA.

### **Initial Paperwork Reduction Act Analysis**

The document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

### **FEDERAL COMMUNICATIONS COMMISSION.**

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